

Christopher P. Birkle
Lovell Law Firm, P.C.
175 North 27th Street, Suite 1206
P.O. Box 1415
Billings, MT 59103
Phone: (406) 256-9300
Fax: (406) 256-9301
I.D. Number: 8046

Attorneys for Creditor
South Seattle Auto Auction

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re:

INCREDIBLE AUTO SALES, LLC,

Debtor.

Case No. 06-60855-RBK

Hon. Ralph B. Kirscher

**OBJECTION TO DEBTOR'S MOTION REQUESTING TO SURCHARGE THE
TWO AUTO AUCTIONS FOR THE DEBTOR'S EXPENSES PAID ON AUTO
AUCTION VEHICLES**

Creditor in interest, Manheim Services Corporation d/b/a South Seattle Auto Auction ("SSAA"), by and through its undersigned counsel, respectfully submits this Objection to Debtor's motion requesting to surcharge the two auto auction vehicles. SSAA prays that the Court excuse the untimeliness of this objection to Debtor's motion out of its sense of equity and also since the Debtor's motion requests relief that is barred by waiver and collateral estoppel.

On January 16, 2007, this Court in its Judgment in favor of SSAA in Adversary Proceeding No. 06-00120 unequivocally declared that “Incredible Auto has no right or interest to the ten vehicles or the proceeds thereof” subject to SSAA’s reclamation claim.

Debtor’s request to surcharge SSAA’s vehicles for Debtor’s expenses paid on the vehicles out of the proceeds received from the sale of said vehicles clearly contravenes this Court’s final judgment in the adversary proceeding. Although not excusing the tardiness of the instant objection, the undersigned did not become aware of this motion until today because the undersigned believed that the language in the Judgment cut off any possibility that Debtors could have any interest in the proceeds, including a surcharge.

In addition, a reclamation claim is not a secured claim, which is a requirement under 11 U.S.C. § 506(c) for such a surcharge to be allowed.

SSAA respectfully submits that the Court should deny the instant motion because it contravenes the Court’s final judgment in the adversary proceeding. Incredible had every opportunity to in the adversary proceeding to raise the instant motion and failed to do so and is collaterally estopped from doing so now.

The undersigned will file a separate request for an expedited hearing contemporaneously with the instant objection.

CONCLUSION

For the foregoing reasons, the Court should deny Debtor's motion for request for a surcharge.

DATED this 20th day of March, 2007.

/s/ Christopher Birkle
Lovell Law Firm, P.C.
P.O. Box 1415
Billings, Montana 59103
Phone: (406) 256-9300
Fax: (406) 256-9301

Attorneys for Creditor
South Seattle Auto Auction

CERTIFICATE OF SERVICE

I hereby certify that, on March 20, 2007, a copy of the foregoing document was served Via CM/ECF the following persons:

PIERRE L. BACHELLER, II
P.O. BOX 2078
BILLINGS, MT 59103
406.252.8202
pbacheller@bachellerlaw.com
Assigned: 02/14/2007

representing

TOYOTA MOTOR CREDIT CORPORATION
19001 South Western Avenue
PO Box 2958
Torrance, CA 90509
310 468-5281
(Creditor)

ALAN C. BRYAN
P.O. BOX 2529
BILLINGS, MT 59103-2529
406 252-3441
abryan@crowleylaw.com
Assigned: 11/02/2006

representing

FIRST INTERSTATE BANK
C/O ALAN C. BRYAN
CROWLEY LAW FIRM
P. O. BOX 2529
BILLINGS, MT 59103-2529
406-252-3441
406-259-4159 (fax)
abryan@crowleylaw.com
(Creditor)

SHANE P. COLEMAN

401 North 31st Street, Suite
1500

P.O. Box 639

Billings, MT 59103-0639

406-252-2166

800-565-7845 (fax)

spcoleman@hollandhart.com

Assigned: 10/20/2006

LEAD ATTORNEY

representing

HYUNDAI MOTOR FINANCE CO

(Creditor)

GARY S. DESCHENES

P.O. BOX 3466

GREAT FALLS, MT 59403-
3466

406 761-6112

descheneslaw@montana.com

Assigned: 03/06/2007

representing

NICK GUTIERREZ

(Creditor)

GREGORY W. DUNCAN

2687 Airport Road, Ste. A

HELENA, MT 59601

406 442-6350

gd@mt.net

Assigned: 12/20/2006

representing

WFS FINANCIAL, INC

PO BOX 25341

SANTA ANA, CA 92799-5341

(Creditor)

BRUCE F. FAIN

MURPHY, KIRKPATRICK &
FAIN

208 NORTH BROADWAY

SUITE 208

BILLINGS, MT 59101

406.256.9700

bruce@murphkirk.com

Assigned: 10/17/2006

representing

**AUTO AUCTION ASSOCIATES OF
MONTANA, INC. d/b/a AUTO**

AUCTION OF MONTANA

P.O. BOX 1433

BILLINGS, MT 59103

406-252-6332

406-252-8126 (fax)

(Creditor)

CHARLES W. HINGLE

SUITE 1500

401 NORTH 31ST STREET

BILLINGS, MT 59101

406-252-2166

chingle@hollandhart.com

Assigned: 10/20/2006

representing

HYUNDAI MOTOR FINANCE CO

(Creditor)

JEFFERY A. HUNNES

GUTHAL, HUNNES, REUSS,

THOMPSON, PC

P.O. BOX 1977

representing

Ernie Dutton

(Creditor)

10 NORTH 27TH STREET
BILLINGS, MT 59103-1977
406.245.3071

jhunnes@ghrtlawfirm.com

Assigned: 12/20/2006

DOUG JAMES

P.O BOX 2559

BILLINGS, MT 59103

406 248-7731

james@moultonlawfirm.com

Assigned: 11/14/2006

representing **UNITED CAR CARE, INC**
(Creditor)

NEAL G. JENSEN

UNITED STATES TRUSTEE'S
OFFICE

LIBERTY CENTER SUITE
204

301 CENTRAL AVE

GREAT FALLS, MT 59401

406 761-8777

Neal.G.Jensen@usdoj.gov

Assigned: 11/06/2006

representing **OFFICE OF THE U.S. TRUSTEE**
U.S. TRUSTEE'S OFFICE
LIBERTY CENTER SUITE 204
301 CENTRAL AVE
GREAT FALLS, MT 59401
406.761.8777
ustpregion18.gf.ecf@usdoj.gov
(U.S. Trustee)

STEVEN M. JOHNSON

P.O. BOX 1645

GREAT FALLS, MT 59403

406.761.3000

sjohnson@chjw.com

Assigned: 01/02/2007

representing **FIRST ADVANTAGE CREDCO**
12395 FIRST AMERICAN WAY
POWAY, CA 92064
800-694-1414
(Creditor)

JARED M LEFEVRE

CROWLEY LAW FIRM

PO BOX 2529

BILLINGS, MT 59103-2529

59103-2529

jlefevre@crowleylaw.com

Assigned: 01/18/2007

representing **KIA MOTORS AMERICA, INC.**
C/O ALAN C. BRYAN
CROWLEY LAW FIRM
PO BOX 2529
BILLINGS, MT 59103-2529
406-252-3441
406-259-4159 (fax)
abryan@crowleylaw.com
(Creditor)

Assigned: 02/13/2007

representing **NUVELL CREDIT COMPANY LLC**
C/O JARED M. LEFEVRE
CROWLEY LAW FIRM
P. O. BOX 2529
BILLINGS, MT 59103-2529
406-252-3441
406-259-4159 (fax)

DANIEL P. MCKAY
LIBERTY CENTER SUITE
204
301 CENTRAL AVE
GREAT FALLS, MT 59401
406 761-8777
Dan.P.McKay@usdoj.gov
Assigned: 11/27/2006

representing

jlefevre@crowleylaw.com
(Creditor)

OFFICE OF THE U.S. TRUSTEE
U.S. TRUSTEE'S OFFICE
LIBERTY CENTER SUITE 204
301 CENTRAL AVE
GREAT FALLS, MT 59401
406.761.8777
ustpreion18.gf.ecf@usdoj.gov
(U.S. Trustee)

WILLIAM L NEEDLER
555 SKOKIE BLVD STE 500
NORTHBROOK, IL 60062
847.559.8330
williamlneedler@aol.com
Assigned: 10/17/2006

representing

INCREDIBLE AUTO SALES LLC
1832 KING AVE WEST
BILLINGS, MT 59102
406-698-4717
406-294-2525 (fax)
(Debtor)

CHRISTIAN T. NYGREN
PO BOX 4947
MISSOULA, MT 59806-4947
406 728-1455
nygren@bigskylawyers.com
Assigned: 12/05/2006

representing

**GE COMMERCIAL
DISTRIBUTION FINANCE CORP**
(Creditor)

JAMES A. PATTEN
STE 300, THE FRATT BLDG
2817 2ND AVE N
BILLINGS, MT 59101
(406) 252-8500
(406) 294-9500 (fax)
japatten@ppbglaw.com
Assigned: 10/30/2006

representing

STEVE'S AUTO SALES INC
(Creditor)

CLARKE B RICE
PO BOX 23563
BILLINGS, MT 59104
406-254-2500
clarkerice@imt.net
Assigned: 10/19/2006
TERMINATED: 01/19/2007
LEAD ATTORNEY

representing

INCREDIBLE AUTO SALES LLC
1832 KING AVE WEST
BILLINGS, MT 59102
406-698-4717
406-294-2525 (fax)
(Debtor)

JEFFREY N RICH
KIRKPATRICK, et al.
599 LEXINGTON AVENUE
NEW YORK, NY 10022

representing

KIA MOTORS AMERICA INC
(Interested Party)

212.536.3900
jrich@klnng.com
Assigned: 12/06/2006
LEAD ATTORNEY

ROSS P. RICHARDSON
P.O. BOX 399
BUTTE, MT 59701
406 723-3219
rossrichardson@qwest.net
Assigned: 12/04/2006

representing **ACCENT MEDIA PRODUCTIONS**
(Creditor)

JASON S RITCHIE
HOLLAND & HART
401 N 31ST STREET SUITE
1500
BILLINGS, MT 59101
406.252.2166
jritchie@hollandhart.com
Assigned: 10/20/2006
LEAD ATTORNEY

representing **HYUNDAI MOTOR FINANCE CO**
(Creditor)

LISA SWAN SEMANSKY
PO BOX 3267
14 5TH STREET SOUTH
GREAT FALLS, MT 59403-
3267
406.771.1584
406.453.1584 (fax)
semansky@bresnan.net
Assigned: 12/22/2006

representing **MARTY ANDRES**
179 BROWNE ST SO
HIGHWOOD, MT 59450
(Creditor)

/s/ Christopher P. Birkle
Lovell Law Firm, P.C.
Attorney for Creditor
South Seattle Auto Auction